

October 2, 2002

Mr. William Maher, Chief
Wireline Competition Bureau
Mr. Thomas Sugrue, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Petition of the California PUC for Authority to Implement Technology-Specific Overlay Area Codes and Request for Expedited Treatment
CC Docket Nos. 99-200, 96-98

Dear Mr. Maher and Mr. Sugrue:

On behalf of the Cellular Telecommunications & Internet Association ("CTIA"), I am writing to express the wireless industry's concern over the September 27, 2002, Petition of the California Public Utilities Commission ("CPUC") requesting authority to implement a technology-specific overlay in the Los Angeles basin and Orange County areas.¹ Rather than taking immediate steps to cure its continuing violation of the Commission's numbering rules, the CPUC is seeking to further delay long overdue relief in the 310 and 909 area codes, and now comes forward with a proposal that will undermine the benefits of wireless carriers' imminent implementation of number pooling. In addition, the CPUC proposes a discriminatory "take-back" of existing wireless numbers in these area codes.² The Commission should act expeditiously on these matters to ensure the realization of its number optimization goals and prevent further harm to the wireless industry and more than 15 million subscribers in the State of California.

In 1996, Congress gave the Commission plenary authority over numbering resources.³ The FCC has used its authority to establish a national framework for number utilization and conservation that is nondiscriminatory and intended to provide carriers with timely access to the numbering resources they require. In delegating authority to some state commissions, the Commission has been clear that the states are not to use rationing as an alternative for timely area code relief,⁴ and the FCC has urged the states to

¹ See *Petition of the California Public Utilities Commission and the People of the State of California for Authority to Implement Technology-Specific Overlay Area Codes and Request for Expedited Treatment*, CC Docket Nos. 99-200, 96-98 (filed Sept. 27, 2002).

² See *id.* at 3-4.

³ See 47 U.S.C. § 251(e)(1).

⁴ See *Numbering Resource Optimization, Second Report and Order*, CC Docket No. 96-98 and CC Docket No. 99-200, FCC 0-429, at ¶ 8 (2000) (hereinafter "*Second Numbering Resource Report and Order*")



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avoid proposing area code relief that includes “take backs” of a single category of legacy numbers.⁵ The CPUC has ignored both of these Commission directives.

As you know, CMRS carriers are required to support Thousand Block Number Pooling no later than November 24, 2002.⁶ In the interim, wireless carriers who satisfy the Commission’s utilization threshold requirements are entitled to receive the additional numbering resources they need to provide service to new customers.⁷ Incredibly, just as the wireless industry prepares for the busy holiday season, the CPUC has directed the Pooling Administrator and the North American Numbering Plan Administrator to bar wireless carriers from participating in the October lottery.⁸ Wireless carriers are barred from participating in the October lottery because the CPUC has limited participation to only “pooling capable” carriers, and wireless carriers will not be able to support pooling until after the October deadlines. The consequence of this action is to discriminate against all non-pooling capable carriers. Moreover, the CPUC directive favors the least successful wireless carriers in the marketplace, carriers who have not attracted as many new customers as the wireless carriers who are now facing the reality of turning away customers who wish to sign up for new wireless service.

While there is no question that that the Commission’s rules provide wireless carriers with a means to obtain needed numbering resources in advance of the transition to pooling, the Pooling Administrator and the North American Numbering Plan Administrator are unable to act absent immediate action by the FCC to reverse the CPUC’s directive. The CPUC has established October 9 for the next lottery. Thus, immediate action is needed to enforce the Commission’s rules and insure that Californians will fully benefit from the competitive wireless market by being able to select the wireless carrier of their choice this holiday season.

The September 27th Petition must be placed against the backdrop of the CPUC’s refusal to provide wireless carriers with the additional numbering resources they require.

(noting that “grants of authority to state commission, however, were not intended to allow the states to engage in number conservation measures to the exclusion of, or as a substitute for, unavoidable and timely area code relief”).

⁵ See *Numbering Resource Optimization, Third Report and Order and Second Order on Reconsideration in CC Docket No. 96-98 and CC Docket 99-200*, FCC 01-362, at ¶ 90 (2001) (hereinafter “*Third Numbering Resource Report and Order*”) (noting that the Commission does not favor “take-backs as a matter of policy”).

⁶ See *Third Numbering Resource Report and Order*, at ¶ 9.

⁷ See *Second Numbering Resource Report and Order*, at ¶ 10 (establishing utilization thresholds for non-pooling carriers to meet “before receiving additional numbering resources in a given rate center”).

⁸ See Letter from John Leutza, Director, Telecommunications Division, California Public Utilities Commission to NANPA Co Code Administrators, California Code Holders and Interested Industry Members (dated Oct. 1, 2002) (stating that “the final lottery for wireless carriers eligible for pooling for the twenty-four pooling NPAs was the September 2002 lottery”).

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CTIA believes that the CPUC proposal, as currently stated, discriminates against wireless providers, and will result in substantial customer confusion and inconvenience due to the massive “take-back” of wireless numbers that will occur if the plan is implemented.⁹ Glossed over by the CPUC’s statement that their proposed “take back” would only change the wireless customer’s area code (which is also the case with the more traditional geographic split form of area code relief) is that each wireless phone must be physically reprogrammed by an authorized service center to change “just” the area code, and that without mandatory ten digit dialing in the overlayed area codes, the requested relief will result in discriminatory dialing patterns for wireline to wireless calls. Moreover, the CPUC Petition does not address how a technology specific overlay can be maintained following the implementation of wireless number portability on November 24, 2003.

CTIA and the CPUC agree on one point: the 310 and 909 area codes are on the brink of complete exhaust, holding on only as a result of extended rationing, and immediate relief is now overdue. Accordingly, CTIA urges the Commission to act expeditiously to clarify California’s obligations under the Commission’s rules. Given its blatant inconsistency with those rules, the Commission may deny the Petition immediately without seeking public comment.

If the Commission does seek comment on the Petition, however, it specifically should ask commenters to address how the CPUC proposal will impact the effectiveness of number pooling in the areas where the technology-specific overlays (“TSOs”) are implemented. The Commission also should specifically seek comment on the proposal’s impact on wireless number portability, including whether Californians will “game” the system by ordering new wireline numbers in the 310 or 909 area codes solely for the purpose of porting them to wireless carriers to avoid discriminatory calling patterns. In addition, to assure that the Commission receives a full range of views and a full record on a broad range of relief alternatives, CTIA requests that the Public Notice for this Petition seek comment on alternate methods of achieving numbering relief. Specifically, the Commission should seek comment on a slight variation of the CPUC proposal – the immediate implementation of the proposed overlay codes as all-services codes, thus obviating the need for discriminatory take backs and discriminatory dialing patterns. Finally, since the CPUC suggests that changing only a user’s area code minimizes the inconvenience to subscribers, the Commission also should invite comments on proposals to relieve the 310 and 909 codes through geographic splits that affect all services equally, and do not involve take-backs from specific service providers.

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⁹ The Commission noted the problems and customer confusion that can occur with take-backs in the *Third Numbering Resource Report and Order*, where it stated that technology-specific overlay proposals “that avoid[] take-backs” would be more likely to “pass muster” with the Commission. *Third Numbering Resource Report and Order*, at ¶ 72.

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Thank you in advance for your assistance with this matter. Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Michael Altschul". The signature is fluid and cursive, with the first name "Michael" and last name "Altschul" clearly distinguishable.

Michael Altschul

cc: Eric Einhorn
Cheryl Callahan
David Furth
Hon. Loretta Lynch
Helen Mickiewicz